find. As the law reaches a higher development, the establishment of limits to general principles become its predominant feature, and the present case is simply an illustration of this tendency.

CONSTITUTIONAL INTERPRETATION—INHERITANCE TAX.

That an inheritance tax is constitutional has long since been affirmatively decided by the great weight of authority. But the opinion handed down by the court in *In re Stanford's Estate*, 58 Pac. 462, is not only instructive, but settles for California, at least, that such tax, though it never came into the possession of the State, but was due the State, belongs to the State; and decides that a legislative act exempting individuals and certain private corporations from the payment of this tax is void, as being in direct conflict with the State constitution, prohibiting the Legislature from making a gift of any public money or thing of value. (Overruling *In re Stanford's Estate*, 54 Pac. 259.) The facts in this case were as follows: Leland Stanford by his will left large legacies in favor of the Leland Stanford Junior University and to certain of his nephews and nieces. A few days previous to Stanford's death a legislative enactment went into effect which provided for the payment of a collateral inheritance tax on property devised to certain classes. The tax so imposed was to become due and payable at decedent's death. In April, 1896, the Superior Court of San Francisco made an order on Stanford's executrix, requiring her to make payment of the tax due on the collateral bequests under the will. From this order an appeal was taken. In 1897 the Legislature amended the original act by exempting from such tax certain persons and classes (under which certain legatees under the Stanford will were included), and provided that such exemptions "shall apply to all property which has passed by will, succession or transfer since the approval of the act of which this act is amendatory, except in cases where taxes have been paid."

On the hearing of the appeal (54 Pac. 259) it was held that such appeal must be determined in accordance with the amendment, and that inasmuch as the amendment in question extended to every part of the State and applied to every person within a class, the same was in effect a general law and therefore did not conflict with the constitutional provision which in terms applied only to local or special laws. In the case under review the court, however, reaches a different conclusion, and hold that though in form the act in question may not be local or special legislation, yet the framers of the constitution, and the people who adopted it, did not hedge about the Legislature with such restraints in the matter of conferring favors, or making gifts or donations by special and local legislation, and at the same time leave the door wide open for similar abuses to enter under the guise of general legislation.

A contention was made that as the State had not come into possession of the tax, there could be no violation of such constitutional provision, inasmuch as the State could not give what it had never possessed. The fallacy of such contention is apparent when considered from the standpoint that it is only by virtue of statute that an heir is entitled to receive any of his ancestors' estate, and that it is in the power of the Legislature to provide that the whole or only a portion shall go to the heirs or other beneficiaries upon the death of the ancestor. This being so, and as all the property of a decedent must vest in some one at his death, if the law provides that only a certain portion can go to the heirs or other beneficiaries, the remainder being reserved to the State as a tax on the right of succession, it of necessity follows that such remainder must vest in the State at the same time that the other property vested in the heirs or beneficiaries. The State, therefore, has a present fixed right of future enjoyment to such a tax, and this is property or a thing of value belonging to the State. It is not possession alone, but the right to possess, which constitutes ownership. Inasmuch as the State's right to such a tax after it is due is property, it seems apparent that any legislation which releases such right would be in conflict with a constitutional provision forbidding the releasing or extinguishing of the indebtedness, liability or obligation to the State.

It would also seem to the average mind a pernicious piece of legislation to exempt those who had not paid the tax and not to exempt those who had complied with the law, as it would appear to set a premium upon the non-fulfillment of an obligation and the imposing of a penalty upon those who obeyed such a statute.